IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 3111 OF 2002

The Divisional Secretary & Ors. .. .. Petitioners

Versus

Western Railway, Bombay Central .. .. Respondents

Mr. J.K. Mistry i/b Eva Elmeida for the Petitioners.

Mr. Suresh Kumar for the Respondent.

CORAM : S.K. SHAH, J.

DATED : 4.10.2005.

P.C.-

1. Heard Learned Counsel on both the sides.

2. In this Petition, the Order of the Learned Presiding Officer, in passing Part-II Award on 6th December, 2001 is challenged. By that Award, the action of the Management of D.R.M. Bombay Division, Western Railway in terminating the services of the Petitioner was held to be legal and justified.

3. The Respondent had Charge-sheeted the Petitioner that the Petitioner had produced forged birth certificate dated 4.9.1975 of M.S.I. College, Ghorakhpur showing his date of

birth as 5.6.63 at the time of his appointment to enable him to get appointment as Casual Labour as otherwise he would not have been eligible. The actual date of birth as per School Leaving Certificate submitted by the Petitioner was 2.10.1959. The enquiry was held by the Respondents. A reference was made to the Central Government Industrial Tribunal. The Part -I Award was passed on 10.8.1999 holding that -

> *" the inquiry which was held against the workman was against the Principles of Natural Justice. The Findings of the inquiry officer are perverse."*

Thereafter the evidence was allowed to be led before the Tribunal. After considering the evidence the impugned Part -II Award came to be passed.

4. The contention that there is one specific charge as under :-

> *" He produced forged certificate dated 14.9.75 of M.S.I. College, Ghorakhpur*

showing his date of birth as 5.6.63 at the time of his appointment to enable him to

get appointment as Casual Labour as otherwise, he would not have been eligible...."

While passing Part -II Award, the Learned Presiding Officer seems to have proceeded with only to consider that the Petitioner had lack of absolute integrity and has violated Rule 3.1 (i) of Railway Services Conduct Rule, 1966.

5. The Learned Counsel for the Petitioner submits that in the evidence that was led before the Tribunal, the Respondent's witness Mr. V.D. Kini admitted in the cross examination that in the year, 1985 [when the Petitioner was appointed], the Casual Labourers' age of recruitment was 28 years. He further points out that during the cross examination of the Petitioner, a question was put to the effect that he was aware that the age limit for the recruitment in the Railway was 28 years.

6. The Learned Counsel for the Petitioner, therefore, submits that taking upper age limit of 28 years, the Petitioner was falling within that limit taking his birth date either as 5.6.63 or 2.10.59. Therefore, he submits that

the later part of the charge, that the Petitioner produced forged birth date certificate to enable to get his

appointment as Casual Labour as otherwise, he would not have been eligible, can not stand. He submits that the Learned Presiding Officer did not take into consideration this aspect. The Learned Counsel for the Respondent failed to point from this Part-II Award that this aspect was taken into consideration, although he submits that at the time when the Petitioner was recruited, upper age limit was 25 years.

7. It, therefore, appears that the Learned Presiding Officer did not take into consideration, as to what was the upper age limit of recruitment in 1985 and whether the later part of the charge that the Petitioner had given forged birth certificate to enable him to get the appointment as Casual Labour as otherwise he would not have been eligible, was established or not. It is, therefore, necessary to remand this matter back to the Central Government Industrial Tribunal for recording the finding on the later part of the charge by giving opportunity to both the parties to lead evidence in that regard.

8. The Writ Petition is, therefore, disposed of with a direction that the matter be remanded back to the Central

Government Industrial Tribunal for recording the evidence on the aspect of age limit for recruitment that was prevailing in 1985 by giving opportunity to both the parties to lead

evidence and record finding and decide the matter afresh.

9. Rule discharged accordingly.

10. The Learned Tribunal shall record its findings and decide the matter in the light of aforesaid observations within a period of six months from the date of receipt of writ of this Court.

11. In this view of the matter the Writ Petition stands disposed of.

[S.K. SHAH, J.]